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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 1004.

DOROTHY BRASWELL, Administratrix of the Estate of Courtney L. Braswell, Deceased,
Petitioner,

vs.

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois.

BRIEF

For Respondent in Opposition.

ROBERT BRODERICK,
322 First National Bank Building,
East St. Louis, Illinois,
Attorney for Respondent.

JOSEPH R. LOWERY,
322 First National Bank Building,
East St. Louis, Illinois,
Of Counsel.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

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BRIEF

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There is no special or important reason for this Court to review the judgment of the Appellate Court of Illinois for the Fourth District or the refusal of the Supreme Court of Illinois to grant leave to appeal from such judgment. The Appellate Court, without reaching the ques-

tion of whether respondent was negligent in returning Braswell to work as he had repeatedly requested it to do, found, that the absence of any proof to causally relate Braswell's unconsciousness and fall to his work, entitled respondent to judgment. In so doing, it recognized and applied the established principle that damages may not be awarded for personal injuries in the absence of proof to causally relate the injuries claimed to the negligence charged. Neither this rule nor its application to this case requires review by this Court. The petition for a writ of certiorari should be denied.

QUESTIONS PRESENTED FOR REVIEW.

(1) Can damages be awarded for personal injuries in the absence of any proof to causally relate the injuries claimed to the negligence charged?

(2) Can a railroad worker, whose complaint charges that he "suffered a physical collapse and injury from the strain and exertion of lifting (railroad) ties and fell unconscious at his place of work," who carried ties for a week without mishap, who "felt all right" and who "hadn't noticed anything unusual about (his) physical condition" before he lost consciousness and fell, who testified he didn't know what happened to cause him to lose consciousness and fall, and who offered no proof by any lay or medical witness that his loss of consciousness and fall were related in any manner to his work, recover damages from his employer on such charge?

(3) Is a verdict of a jury in a railroad worker's suit against his employer immune from correction by a reviewing state court when such verdict is patently erroneous in reaching a conclusion which the law will not permit?

STATEMENT OF THE CASE.

Braswell limited his right to recover damages to the charge made in his complaint that while he "and other employees of defendant were engaged in lifting and placing Defendant's railroad ties on a small railroad car" he "suffered a physical collapse and injury from the strain and exertion of lifting said ties and fell unconscious at his place of work" and that this collapse and injury resulted from respondent's negligence in assigning him "to a job which he was physically unable to perform" (A. 2, 3). Whether there was any basis in the evidence to support the charge that Braswell lost consciousness and fell from the strain and exertion of lifting ties was an issue which the Appellate Court was called upon to decide. It found that the record contained no such evidence. Petitioner, however, says in her Statement of the Case (p. 8):

> "Braswell returned to work on June 13, 1957, and suffered a physical collapse and injury from the strain and exertion of lifting ties on July 3, 1957, as alleged in paragraph 3 of the Complaint (A. 2, 36, 40 and 47)."

This statement is misleading and inaccurate. There is absolutely no testimony in any of the abstract references that plaintiff's collapse and injury resulted from the strain and exertion of lifting ties. The abstract references refer to the testimony of witnesses Garrison, Hempkin and Schien, who were working with Braswell on July 3. No one of these witnesses offered any explanation for Braswell's collapse and fall. All of them, on the contrary, agreed that Braswell "got along all right carrying these ties," had no "trouble getting the four ties on the push cart," and "didn't make any complaint" while he did so (A. 49, 41, 42, 38). In view of the Appellate Court's

finding in its opinion that "None of the persons who were with plaintiff could offer any explanation for what happened" (Petition p. 23) and the importance of that circumstance to its decision in this case, the inaccuracy of petitioner's statement is significant.

Braswell introduced the testimony of his wife, Dorothy (petitioner here), section workers, Schien, Garrison and Hempkin, Drs. Hediger, Gross and Rehberger, and testified in his own behalf in support of his complaint. As the Appellate Court found and the undisputed facts demonstrate, neither Braswell nor any of his medical or non-medical witnesses offered any explanation for Braswell's loss of consciousness, fall and resulting injury, and none was asked for or expressed any reason for or opinion that Braswell's exertion in lifting ties produced his unconsciousness and fall. The Appellate Court, therefore, properly found that there was an absence of any proof which causally related Braswell's injuries to respondent's claimed negligence in returning him to work and entered judgment for respondent.

In the light of petitioner's statement of the case and in fairness to the Appellate Court, respondent makes a more detailed statement than might otherwise be warranted.

Braswell, who became 60 years of age on July 25, 1962, began work as a section hand for respondent on May 28, 1947 (A. 94). He performed his duties in the section gang satisfactorily and without difficulty until late 1955 when he developed a persistent cough (A. 95). On November 19, 1955, at the advice of his personal physician, Dr. Eugene F. Wahl, he was admitted to Barnes Hospital in St. Louis, Missouri, and placed under the care of Dr. Thomas H. Burford, one of the outstanding thoracic surgeons of the Middle West, and the members of his staff (A. 95, 67, 118). Those doctors found that Braswell

had a bronchogenic carcinoma of the right lower lobe and in a series of operations which followed, his right lung was removed (A. 53, 54, 67, 95, 96). Braswell continued under the care and treatment of the members of Dr. Burford's staff until October 1, 1956, when Dr. Ferguson, one of Dr. Burford's assistants, released him to return to work on October 1, 1956 (A. 57, 69, 96).

Braswell promptly presented Dr. Ferguson's release to his foreman and requested to be returned to work as a section hand (A. 88, 99). For the next eight months and until he was permitted to return to work on June 13, 1957, Braswell made repeated and persistent demands that respondent return him to his job as a section hand (A. 57, 58, 59). At his request, Dr. Eugene Wahl examined him on three different occasions, the last of which was on December 1, 1956 (A. 89, 79). When Dr. Wahl refused to certify him for employment, Braswell wrote respondent's Roadmaster, Bracken (Def.'s Ex. No. 1):

> "Dr. Wahl said to advise you, I should be examined by the head Doctor.
>
> "Now this has been going on sense October 1, 1956. When my Doctors said I could report back to work. I would like to go to the Head Doctor to be examined and would like to here from you as soon as possible, as I think Ive been fair with both you and the Railroad Company" (A. 153).

Thereafter, Braswell, accompanied by his wife, went to Cleveland on February 15, 1957, and was examined by Dr. Donald O. Darrah, respondent's assistant medical director (A. 54, 126). (Dr. Darrah, who is now dead, was suffering from an acute heart condition which prevented him from testifying at the trial.) (A. 118). Dr. Darrah refused to pass Braswell for work but suggested Braswell have Dr. Burford write a letter explaining Braswell's condition (A. 90).

Thereafter and for the purpose of persuading respondent to put him back to work, Braswell requested Dr. Burford to and on March 4, 1957, Dr. Burford did write to Dr. Darrah (Defendant's Exhibit 2) and sent a copy of his letter to Braswell (A. 58, 118, 155). Dr. Burford detailed the operative procedures Braswell had undergone at Barnes Hospital and expressed his conclusion that "I consider him definitely employable" (A. 155).

Braswell took his copy of Dr. Burford's letter and discussed it with Dr. Darrah at his office in Cleveland early in June, 1957 (A. 55, 100, 103). Dr. Darrah advised Braswell he would be permitted to return to his job as section hand and, according to Braswell, instructed Braswell "if I got to feeling bad or I seen I couldn't stand it to notify him" (A. 110).

Braswell resumed work as a section hand at Alhambra, Illinois, on June 13, 1957 (A. 128). With the exception of one-half day, he worked continuously, Saturdays and Sundays included, and without any complaint or incident until the morning of July 3, 1957 (A. 104). During this interval he worked with his foreman, Louis Schien, and section hands, Maynard Hempkin and James Garrison, with whom he had worked prior to the onset of his illness in 1955 (A. 91). He helped carry railroad ties and did other section work without experiencing any physical disability in so doing (A. 104, 41). He made no complaint of any kind to either his foreman or fellow workmen and testified he did not report to Dr. Darrah that his work was too heavy or he felt he couldn't do it, because: (A. 110)

> "I never did notify him because I never had occasion to.
>
> "This was because I got along all right with my work for the twelve and a half days I was working and felt I could stand it."

Braswell reported for work at his regular starting time of 7:00 A. M., on July 3, 1957 (A. 104). His foreman, Schien, and section men, Hempkin and Garrison, reported for duty at the same time (A. 49, 50). These four constituted the section gang and had regularly worked together after Braswell's return to duty on June 13, 1957 (A. 40). They boarded a motor car which they obtained at the shed at Alhambra and rode four and one-half miles west of Alhambra, patrolling or inspecting the track (A. 49). They then rode back to Alhambra where they attached a push car to the motor car and rode a short distance to a place where some ties were stacked. They stopped some twelve feet from the tie pile for the purpose of loading some of the ties on the push car (A. 41, 49).

The four men spent about 20 or 30 minutes in carrying four ties from the tie pile to the push car (A. 49). The four wheel push car had a flat bed which was some two feet higher than the top of the rails (A. 49). The ties were about seven feet long and weighed approximately 200 pounds each (A. 35, 39). The four men carried each tie by using two sets of tie tongs. The tongs were about two feet in length, with two hooks on one end and two handles on the other, so that in carrying the ties two men held each tong at each end of each tie (A. 47, 49). Each of the four ties was set crosswise on the back of the push car bed and then pushed along the bed to the front end of the car (A. 49). This was exactly the same method this four man section gang had used to load ties on other days between June 13 and July 3, 1957, and was the same method respondent had always employed during all of the years Braswell had worked as a section hand (A. 39, 41, 49, 104).

Neither Braswell, Schien, Garrison or Hempkin experienced any difficulty in loading the four ties on the cart.

The ties were loaded in the usual and customary manner and nothing out of the ordinary occurred in the loading operation. The tongs were in good condition and worked properly. No one of the four men slipped or stumbled or lost his hold on the tongs or permitted the weight to shift. The men were not hurried in their work, the push car didn't move and the ties were no longer or heavier than others they had moved many times before in the same manner (A. 39, 41, 49, 50).

When the fourth tie was placed on the cart, Braswell and Garrison pushed it to the front end. Braswell started to walk toward the back of the car and fell to the ground unconscious and "just laid there staring up in the sky" (A. 48, 37, 40, 41).

Braswell, on several occasions after he returned to work on June 13, had helped carry ties of the same kind he helped carry on the morning of July 3 (A. 41, 48, 104). He described this work by saying (A. 91), "When I went back, we began carrying ties, loading ties on a push car and we'd been carrying those ties for the last week putting them in under the main track * * *." He had last done such work only a day or two before (A. 41). He had never experienced difficulty or mishap while carrying ties and experienced none on the morning of July 3. Braswell testified, "There wasn't anything different on the morning of July 3rd than there had been on the days preceding it when I had been working, that I know of" (A. 110). Braswell's witnesses, Schien, Hempkin and Garrison, all agreed that Braswell had no difficulty in and made no complaint while working on July 3 before he fell unconscious on his back. Schien put it (A. 49):

> "As near as I know, Braswell got along all right carrying these ties. He never complained or nothing.

I didn't notice anything unusual about his activity that morning until he fell and they hollered there."

Hempkin explained (A. 41, 42):

"I didn't notice that any of the four of us had any trouble getting these ties up and moved over to the car. * * *

"I didn't hear Braswell make any complaint while we were moving the four ties on the morning of July 3, 1957. He didn't say anything, if he did I don't remember it. The first thing I knew that there was anything the matter is when I looked around and saw him fall."

Garrison testified:

"While we moved the four ties and down until the time Braswell collapsed he didn't make any complaint to me and I didn't hear him make any complaint to anybody else (A. 38).

"Down until the time Mr. Braswell collapsed, we hadn't done anything different than we had done on other days in moving these ties and putting them on the push car. We were doing the work in the same way we had done it before. I didn't experience any difficulty myself in the work and I didn't notice that anybody else experienced any difficulty" (A. 39)

Braswell's account was the same as his witnesses. He testified (A. 104):

"There was nothing unusual about my work that morning that I know of. As far as I knew I felt all right up until the time this thing happened to me. Louis Schien was working on the tie tongs with me and we moved these four ties over and put them on the cart that was hooked up to the motor car. After we got the fourth one there, Garrison and I

pushed it toward the front of the car. I don't remember what I did then. I don't know what I did. Down to that point I hadn't noticed anything unusual about my physical condition and hadn't paid any attention to it."

In response to his counsel's question to explain what happened to him, he replied (A. 92):

"I don't know. I wish I did know what happened."

Braswell was taken by ambulance to St. Joseph's Hospital in Highland, Illinois, some 12 miles from Alhambra, where he regained consciousness later that day. He was treated there by Dr. Edward L. Hediger, who determined Braswell had a marked compression deformity of the first lumbar vertebra and a slight compression deformity of the second lumbar vertebra. Braswell told Dr. Hediger "he had been working and feeling okay" (A. 73, 74). That this was so was evidenced by the fact that while he weighed only 102 pounds when he started work on June 13, he weighed 110 pounds when he entered St. Joseph's Hospital on July 3 (A. 91, 74). Dr. Hediger was "amazed that his general physical condition was as good as it was when you consider the amount of surgery that he had had" (A. 72).

Braswell received hyperextension and improved sufficiently so that 10 days later on July 13, 1957, he was discharged ambulatory from the hospital and returned to his home (A. 72, 105). Thereafter Braswell was treated by Drs. Hediger and Lester P. Rehberger and examined by Dr. Richard L. Gross (A. 75, 62, 67, 83, 84).

These doctors were called as Braswell's witnesses. No one of them was asked for or expressed any opinion that there was or might have been any relationship between the work which Braswell did on the morning of July 3,

1957, and his fall. Neither of them nor any other witness offered any testimony or opinion to explain what it was or could have been which caused Braswell to become unconscious and fall to the ground, and Braswell could offer no reason for his condition since he stated simply he didn't know what happened (A. 92).

The succinct recitation of the facts which the Appellate Court made, as the foregoing detailed statement shows, was accurate and fully demonstrated, as the Court found, that there was no evidentiary basis for the verdict which the jury returned.

ARGUMENT.

A) There Was No Proof or Circumstance to Causally Relate Braswell's Injury to Respondent's Alleged Negligence.

Braswell made no claim in his complaint or contention at the trial that respondent was guilty of any act or omission just before and at the time of his fall which caused or contributed to it. The undisputed evidence was that the four railroad ties were loaded on the push car in the usual and customary way and that nothing out of the ordinary occurred during the loading operation. Braswell's claim to recovery, as the Appellate Court noted, was premised solely on the charge in his complaint that he was injured when he fell unconscious "from the strain and exertion of lifting" the four ties and that respondent was negligent in assigning him to this task which he lacked the physical ability to perform.

Braswell did not testify, as he alleged in his complaint, that he lacked the physical ability to help carry the four railroad ties as he did on July 3 or that he collapsed from the strain and exertion of so doing. His testimony was expressly and unequivocally to the contrary. What he said was:

> "When I went back, we began carrying ties, loading ties on a push car and we'd been carrying those ties for the last week putting them in under the main track * * *";
>
> "I got along all right with my work for the twelve and a half days I was working * * *";
>
> "There was nothing unusual about my work that morning that I know of. As far as I know I felt all right up until the time this thing happened to me"; and

"Down to that point I hadn't noticed anything unusual about my physical condition and hadn't paid any attention to it" (A. 91, 110, 104, 105).

Braswell didn't say he experienced any shortness of breath, or strain, or that the lifting he did on one of the tie tong handles as he had been doing on the days immediately preceding July 3, caused him any unusual exertion. He wasn't pushed, hit or struck by any object and he felt no pain in his back or other physical symptom of ill-being before he lost consciousness and fell. He simply fell on his back unconscious and "just laid there staring up in the sky" (A. [illegible]) unable to speak or move. No one of Braswell's medical witnesses expressed any opinion that his prolonged period of unconsciousness, fall and resulting injury had any relationship to his work, or that his assistance in moving the ties which involved carrying approximately fifty pounds for a distance of twelve feet, as he did and had repeatedly done before, might have caused or contributed to cause such condition. Had any of them so believed, he could have so testified. No such testimony, however, was asked for or given. Braswell's explanation of his condition was no more helpful, since he answered his counsel's direct question of "What happened?" by saying, "I don't know. I wish I did know what happened" (A. 92). If Braswell was unable to give any explanation for his unconsciousness, and if none of his lay and medical witnesses could offer any opinion or reason therefor, how could the jury have properly found that Braswell's unconscious condition, fall and vertebral deformities were causally related to respondent's alleged negligence in reemploying him? The jury's conclusion that Braswell's injuries were causally related to respondent's claimed negligence in returning him to work was refuted by Braswell's express testimony and, as the Appellate Court found, was unsupported by

any evidence or circumstance of record. While this Court has gone far to credit verdicts of juries in this class of cases, it has not to this point held that a railroad worker may recover damages from his employer when his own testimony refutes his right to such recovery and there is otherwise an entire absence of any proof to causally relate the injuries which he claims to the negligence which he charges.

B) **Speculation Cannot Supply the Place of Proof.**

Braswell's account of the events preceding his loss of consciousness and the absence of any testimony or circumstance to account for or explain it left the jury without any evidence or circumstance from which it could properly reach the conclusion that Braswell's unconscious condition, fall and injury resulted "from the strain and exertion of lifting "the four ties which he helped carry. The jury's verdict that Braswell's unconsciousness was so caused, as the Appellate Court found, was necessarily based entirely on speculation and surmise. This Court and others have held that speculation cannot supply the place of proof and that damages for personal injuries may not be awarded on speculation and conjecture.

In **Moore v. Chesapeake & Ohio Railway Co.**, 340 U. S. 573, 95 L. ed. 547, 71 S. Ct. 428, the lower court set aside plaintiff's jury verdict and entered judgment for the Railway. This Court affirmed because the verdict was based on speculation. In doing so it held, p. 575:

> "To recover under the Act, it was incumbent upon petitioner to prove negligence of respondent which caused the fatal accident. **Tennant v. Peoria & P. U. R. Co.**, 321 U. S. 29, 32, 88 L. ed. 520, 523, 64 S. Ct. 409, 15 N. C. C. A. N. S. 647. The negligence she alleged was that respondent's engineer made a sudden and unexpected stop without warning, 'thereby

causing decedent to be thrown from a position of safety on the rear of the tender' into the path of the train."

This Court said further, p. 576:

"The burden was upon petitioner to prove that decedent fell after the train stopped without warning, which was the act of negligence she charged. Her evidence showed he fell before the train stopped."

and concluded, pp. 577-578:

"To sustain petitioner, one would have to infer from no evidence at all that the train stopped where and when it did for no purpose at all, contrary to all good railroading practice, prior to the time decedent fell, and then infer that decedent fell because the train stopped. This would be speculation run riot. **Speculation cannot supply the place of proof. Galloway v. United States**, 319 U. S. 372, 395, 87 L. ed. 1458, 1473, 63 S. Ct. 1077." (Emphasis supplied.)

Again in **Inman v. Baltimore & O. R. Co.**, 361 U. S. 138, 4 L. ed. 198, 80 S. Ct. 242, a railroad crossing watchman obtained a verdict and judgment for injuries which he alleged were caused by the Railroad's negligence in failing to furnish him a reasonably safe place to work. The Court of Appeals of Ohio reversed this judgment because of a complete failure of proof to establish the negligence charged. This Court affirmed, holding, p. 140:

"The burden of proving that the crossing was an unsafe place to work was on petitioner. It depended on some type of testimony showing the hazards at the crossing. There is no evidence of complaint to the railroad, nor is there other testimony of similar occurrences in the record."

In **Atchison, T. & S. F. R. Co. v. Toops**, 281 U. S. 351, 74 L. ed. 896, 50 S. Ct. 281, this Court said, pp. 354-355:

"The negligence complained of must be the cause of the injury. The jury may not be permitted to speculate as to its cause, and the case must be withdrawn from its consideration unless there is evidence from which the inference may reasonably be drawn that the injury suffered was caused by the negligent act of the employer."

The Court in **Simpson v. Texas and New Orleans Railroad Company** (C. A. 5th), 297 F. 2d 660, held, p. 662:

"Despite some loose talk to the contrary, the plain language of the Federal Employers' Liability Act makes unmistakably clear that it is not a workmen's compensation act but provides relief only for injury or death resulting in whole or in part from the negligence of the employer railroad, * * *."

Again in **Chesapeake & Ohio Ry. Co. v. Thomas** (C. A. 4th), 198 F. 2d 783, it is stated, p. 788:

"The Federal Employers' Liability Act does not make a railroad company an absolute insurer against personal injuries suffered by its employees. There still must be proof of negligence, and that negligence must be in whole or in part the proximate cause of the injuries."

To the same effect is **Milom v. New York Central Railroad Company** (C. A. 7th), 248 F. 2d 52, 55, cert. den. 355 U. S. 953, 2 L. ed. 2d 529, 78 S. Ct. 537.

In **Page v. St. Louis Southwestern Railway Company** (C. A. 5th), 312 F. 2d 84, the Court in referring to the provisions of the Federal Employers' Liability Act, states, p. 87:

"The italicized words, 'resulting in whole or in part from the negligence,' would seem sufficient to place beyond cavil or debate the proposition that the

Act does not provide workmen's compensation, but that liability is based upon negligence having a causal connection with the injury, and both the Supreme Court and this Circuit are committed to that proposition."

Neither Braswell nor any medical or non-medical witness testified Braswell's work in carrying railroad ties for respondent in any manner affected plaintiff's health or physical well being. While there was testimony Braswell did not work as hard as other members of the crew, Braswell testified he felt no ill effects from the work which he did and made no complaint at any time about the work to which he was assigned. No one of Braswell's doctors contended that his work might or could have affected his physical condition in any manner, and, in fact, were not even asked to express an opinion on this subject. Braswell had the burden of proving his charge that he fell unconscious "from the strain and exertion" of lifting the four railroad ties he helped carry. He offered no proof to meet this burden but left the cause of his unconsciousness and fall to the speculation of the jury. This Court has made it clear, as the cases referred to so well demonstrate, that speculation cannot form the basis for a jury's award of damages. The Appellate Court properly entered judgment for respondent.

THE CASES RELIED ON BY PETITIONER.

The authorities on which petitioner depends do not support her contention that the Appellate Court erroneously entered judgment for respondent. Braswell was not in the position of plaintiff's intestate in **Lavendar v. Kurn**, 327 U. S. 645, 90 L. ed. 916, 66 S. Ct. 740. There plaintiff's intestate died as a result of a skull fracture inflicted by " 'some fast moving small round object' " which one of plaintiff's doctors testified might have been attached to a train backing 8 to 10 miles an hour (pp. 648-649). The

testimony, moreover, showed that a train had backed past the deceased at that speed just before he was discovered unconscious and that the curled end of a mail hook could have been positioned on the side of the train in a manner to have struck deceased on the head as he stood next to the track where his body was found. The evidence established the cause of death and demonstrated by circumstances the manner in which the fatal injury was inflicted. In **Rogers v. Missouri Pacific R. Co.**, 352 U. S. 500, 1 L. ed. 2d 493, 77 S. Ct. 443, plaintiff fell from the top of a culvert when he stepped on loose gravel negligently left thereon and where he had gone in furtherance of explicit orders to watch for hotboxes on passing trains. The fact that plaintiff's injuries were causally related to his fall from the culvert was not in dispute. Plaintiff, in **Sinkler v. Missouri P. R. Co.**, 356 U. S. 326, 2 L. ed. 2d 799, 78 S. Ct. 758, was injured when a railroad car in which he was working was negligently switched into violent collision with a second car. The causal connection between plaintiff's injuries and the collision resulting from the negligent switching movement was not disputed. Again, in **Southern Railway Co. v. Welch** (C. A. 6th), 247 F. 2d 340, plaintiff alleged and proved defendant was negligent in failing to provide him with sufficient help in moving 1600 pound rails and two physicians testified his injury was causally related to his work in moving such rails. Plaintiff's intestate, in **Tiller v. Atlantic Coast Line R. Co.**, 318 U. S. 54, 87 L. ed. 610, 63 S. Ct. 444, while inspecting seals on a train which was moving slowly on one track was hit and killed by the rear car of a backing train on an adjoining track. The evidence sufficiently showed the cause of death. Likewise in **Harrison v. Missouri Pacific R. Co.**, 372 U. S. 248, 9 L. ed. 2d 711, 83 S. Ct. 690, there was no question that plaintiff was not injured as th proximate result of being assaulted by a section laborer. This Court determined only that plaintiff's testimony raised a jury question of whether or not defendant had knowledge that

the section hand was a "bad actor" so that it might have foreseen that the assault would occur. Finally, in **Siete v. Industrial Comm.**, 24 Ill. 2d 368, 181 N. E. 2d 156, which involved a proceeding brought under the provisions of the Illinois Workmen's Compensation Act, so that negligence was not involved, the causal connection between the injury and death was clear, as the Court held, p. 159: "In addition, the medical testimony and hospital records certainly established a causal connection between the accidental injury and the ensuing death the next day."

CONCLUSION.

The record in this case contains no evidence or circumstance to explain Braswell's unconsciousness, fall and resulting injury. It does, however, clearly show that Braswell, as he testified, experienced no strain or exertion in helping carry the four ties to the push car on July 3 in the same way he had done many times before on preceding days. He suffered no pain, felt no unusual physical symptom of any kind and simply and without any cause or reason which he or any of his doctors or other witnesses could describe, lost consciousness and fell on his back. To argue, as petitioner does here and did in the Appellate Court, that such loss of consciousness was the result of "strain and exertion of lifting ties" is to resort to unsupported speculation which the factual evidence clearly disputes.

The Appellate Court properly determined there was no evidentiary basis for the verdict which the jury returned. It had no legal alternative to do otherwise. In so doing it did not, as petitioner argues, ignore the provisions of the Federal Employes' Liability Act and the opinions of this Court, for that Act does not intend, and this Court, nor any other, has declared, that damages may be awarded for personal injuries in the absence of any proof to causally relate the injuries claimed to the negligence charged.

The judgment of the Appellate Court reversing the ju
ment of the Circuit Court of Madison County was and
correct. The petition for a writ of certiorari should
denied.

Respectfully submitted,

ROBERT BRODERICK,
322 First National Bank Buildi
East St. Louis, Illinois,
Attorney for Respondent

JOSEPH R. LOWERY,
322 First National Bank Building,
East St. Louis, Illinois,
Of Counsel.